HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 2(b)

Description of the case.

WPMS No. 7430 of 2001
Old No. 4877 of 1988
Anand Ballabh

Vs

District Judge, Pauri
Garhwal & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 2.8.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 7430 (M/S) of 2001
Old No. 4877 of 1988

Anand Ballabh Thapliyal,
S/o Mastram Thapliyal,
R/o Manpur, Halka Sukro,
Kotdwar, District Pauri Garhwal.

.....Petitioner

Versus

1. District Judge, Pauri Garhwal.
2. Smt. Shanti Devi W/o Kashi Ram,
   R/o Najibabad, District Bijnore.

.....Respondents

Sri Vipul Sharma, Advocate holding brief of Mr. S. Dhulia, Senior Advocate for the petitioner
Standing Counsel for respondent No. 1.

Dated: 2.8.2006

Hon'ble Rajesh Tandon, J.

Heard Mr. Vipul Sharma, Advocate holding brief of Mr. S. Dhulia, Senior Counsel for the petitioner.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 16.03.1988 and 29.10.1987 passed by the District Judge, Pauri Garhwal and the Prescribed Authority respectively (Annexures Nos. 7 and 6).

Briefly stated, the petitioner has rented a shop situated at Shivaji Marg, Cinema Road, Kotdwar, District Pauri Garhwal on 04.01.1984 from one Suresh Kukreti. An application for allotment under Section 16 of the Act was filed by the petitioner before the Prescribed Authority, which was allowed and the shop was allotted to the petitioner on 07.05.1985. Against that order of

allotment, the landlady i.e. respondent No. 2 went in revision before the District Judge, Pauri Garhwal, which was allowed and the order of allotment dated 07.05.1985 was set aside on the ground that a release application of the landlady under Section 16 of the Act was also pending before the Prescribed Authority. However, the said release application filed by the landlady was rejected by the Prescribed Authority/SDM on 19.05.1986. Aggrieved by the said order of the Prescribed Authority dated 19.05.1986, the landlady (respondent No. 2) went in revision before the District Judge, Pauri Garhwal, which was registered as Revision No. 4 of 1986. The said revision was allowed and the case was remanded to the Rent Control and Eviction Officer for considering the release application of the landlady. After the remand of the case, the Prescribed Authority/SDM has allowed the release application of the landlady vide order dated 29.10.1987 and the accommodation was released in favour of the landlady.

Aggrieved by the said order of the Prescribed Authority/SDM dated 29.10.1987, the petitioner went in revision, which was registered as Revision No. 12 of 1987 before the District Judge, Pauri Garhwal. The said revision was also dismissed vide order dated 16.03.1988.

Against the said orders dated 29.10.1987 and 16.03.1988, the present writ petition has been filed.

The petitioner, being a prospective allottee, has no right to file an objection and contest the application for release made by the landlady, as such, the writ petition is not maintainable.

In **Vijay Kumar Sonkar Vs. Incharge District Judge and others** reported in **1995(2) ARC 1,** relying upon the judgment in the case of **Talib Hassan and another Vs. Ist Addl. District Judge, Nainital and others** reported in **1987 (1) A.R.C. 18,** it has been held as under:

> "It is on this understanding of the law that the High Court relying on its Full Bench decision in the case of Talib Hasain v. Ist Addl. District Judge, 1986(1) ARC 1(SC) : 1986 SCFBRC 369 (Alld) (FB) : AIR 1986 Alld 196 (FB) : 1986 All LJ 845 (FB), rejected the prayer of the prospective tenant that he had a right to be heard in a release application of the landlord based as it was on the provisions of sub-section (2) of Section 16 on ground of bana fide requirement. On the allowing of the release application the premises in question ceased to be allotable and since the District Magistrate, thereafter would have no jurisdiction to make an allotment thereof and the prospective tenant consequently has no right to resist the landlord in release proceedings."

In view of the above, the writ petition is not maintainable and is accordingly dismissed. No order as to costs.

Rajesh Tandon, J.